

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

J & J SPORTS PRODUCTIONS, INC.,

Plaintiff,

V.

PATRICIA PAULA ROSEL RAMIREZ.

Defendant.

Case No. 14-cv-03951-YGR

ORDER DENYING MOTION TO AMEND JUDGMENT

Re: Dkt. No. 28

On May 22, 2015, plaintiff J & J Sports Productions, Inc. filed a motion to alter or amend judgment. (Dkt. No. 28.) No opposition was filed by the deadline. The plaintiff argues that the amount of statutory damages previously awarded failed to provide adequate compensation for its injury and the enhanced damages awarded are not sufficient to serve as an effective deterrent.

Having carefully considered the papers submitted,¹ the record in this case, and good cause shown, the Court hereby **DENIES** the motion.

I. FACTUAL & PROCEDURAL BACKGROUND

This case was filed on September 2, 2014. (Dkt. No. 1.) Generally, the complaint alleges that on September 14, 2013, the defendant unlawfully exhibited at “Patty’s Beauty Salon” a broadcast of a pay-per-view boxing match over which the plaintiff claims certain rights. (*Id.*) Based on the information provided by the plaintiff, the defendant apparently did not advertise the broadcast in advance or institute a cover charge for attendance, and only a dozen patrons were present. (Dkt. 19-3, at 2.)

¹ The Court finds this motion is appropriate for decision without oral argument, as permitted by Civil Local Rule 7-1(b) and Federal Rule of Civil Procedure 78. *See also Lake at Las Vegas Investors Group, Inc. v. Pacific Malibu Dev. Corp.*, 933 F.2d 724, 729 (9th Cir. 1991). Accordingly, the hearing set for June 30, 2015 is VACATED.

1 The plaintiff submitted a motion for default judgment. (Dkt. No. 19.) The matter was
2 referred to Magistrate Judge Nandor Vadas for a report and recommendation. (Dkt. No. 20.)
3 Judge Vadas recommended awarding the plaintiff \$8,800 in total damages—comprised of \$2,200
4 in statutory damages, \$4,400 in enhanced damages, and \$2,200 in conversion damages. (*Id.*) The
5 Court adopted the report in every respect but one. (Dkt. No. 26.) The Court awarded only \$500 in
6 enhanced damages, finding that amount adequate under 47 U.S.C. section 553(c)(3)(B). (*Id.*)
7 Default judgment was entered for the plaintiff in the amount of \$4,900. (Dkt. No. 27.)

8 **II. LEGAL STANDARD**

9 Pursuant to Federal Rule of Civil Procedure 59(e), a court may alter or amend a judgment
10 in certain circumstances. *See Munden v. Ultra-Alaska Associates*, 849 F.2d 383, 387 (9th Cir.
11 1988). Rule 59(e) is generally seen as “an ‘extraordinary remedy, to be used sparingly in the
12 interests of finality and conservation of judicial resources.’” *Carroll v. Nakatani*, 342 F.3d 934,
13 945 (9th Cir. 2003). A motion under Rule 59(e) “should not be granted, absent highly unusual
14 circumstances, unless the district court is presented with newly discovered evidence, committed
15 clear error, or if there is an intervening change in the controlling law.” *389 Orange St. Partners v.*
16 *Arnold*, 179 F.3d 656, 665 (9th Cir. 1999). A district court enjoys considerable discretion in
17 granting or denying a motion to amend or alter a judgment under Rule 59(e). *See McDowell v.*
18 *Calderon*, 197 F.3d 1253, 1255 n.1 (9th Cir. 1999) (en banc).

19 **III. DISCUSSION**

20 The plaintiff bases its motion on the “clear error” prong referenced above. The motion
21 focuses on two purported errors: (1) the undervaluing of statutory damages and (2) the awarding
22 of enhanced damages that are not “adequate” for purposes of deterrence. The Court addresses
23 each in turn.

24 **A. Statutory Damages**

25 The plaintiff first objects to the statutory damages award of \$2,200. As a threshold matter,
26 the Court notes that a party may file an objection to a Magistrate Judge’s report and
27 recommendation within 14 days after being served a copy. *See United States v. Thoms*, 684 F.3d
28 893, 899 (9th Cir. 2012) (citing 28 U.S.C. § 636(b)(1)). Failing to file an objection may waive the

1 right to appeal the district court's judgment adopting the report. *Thomas v. Arn*, 474 U.S. 140, 142
2 (1985). Here, the plaintiff never objected to the report and recommendation, including the
3 proposed amount of statutory damages (\$2,200) to be awarded pursuant to 47 U.S.C. §
4 553(c)(3)(A)(ii) (providing that "the party aggrieved may recover an award of statutory damages for
5 all violations involved in the action, in a sum of not less than \$250 or more than \$10,000 *as the court*
6 *considers just*" (emphasis added)), prior to the Court's order adopting that aspect of the report.
7 Nevertheless, the plaintiff now seeks an increased figure, claiming the amount of statutory
8 damages awarded constitutes clear error.

9 To the contrary, the Court properly found that \$2,200 in statutory damages was adequate
10 under the circumstances. *See, e.g., J & J Sports Prods., Inc. v. Concepcion*, No. 10-5092, 2011
11 WL 2220101, at *4 (N.D. Cal. June 7, 2011) (finding \$2,200 in statutory damages appropriate in
12 the case of "first-time offenders for whom plaintiff provided no evidence of advertising, cover
13 charge, or increased food price" and where more than fifty patrons were present, with the program
14 displayed on three televisions). Here, there were apparently no prior advertisements or cover
15 charges and only a dozen patrons were present. Moreover, the broadcast was played on only one
16 40-inch television set situated "in the far corner" of the establishment. Based on these
17 circumstances, and the declarations provided by the plaintiff, the Court found a statutory damages
18 award of \$2,200 to be just. The plaintiff's concerns regarding deterrence and the defendant's
19 purported profits are adequately addressed by the total award, which also included enhanced and
20 conversion damages. The plaintiff provided no binding authority calling for a contrary result.
21 Thus, there is no clear error warranting amendment of the judgment.

22 B. Enhanced Damages

23 The plaintiff next argues the enhanced damages awarded are insufficient to deter future
24 violations because (1) the Court previously awarded the plaintiff the same amount in another case
25 against a *different* defendant, and (2) the *current* defaulted defendant nevertheless purportedly
26 committed the same class of violation thereafter. This argument does not persuade. The plaintiff
27 cites no authority in support of its position that subsequent violations demonstrate an earlier award
28 was insufficient as a general deterrent. Moreover, under the plaintiff's theory, due to economic

1 inefficiencies, such awards would skyrocket as they would need to be increased, without limit,
2 with each subsequent violation, eventually reaching heights that would impose unfair penalties on
3 violators vastly disproportionate to the harm caused. In fact, some have argued that optimal
4 deterrence may be achieved where the total award is calculated by multiplying the harm caused by
5 the probability of being found liable. *See A. Mitchell Polinsky & Steven Shavell, Punitive*
6 *Damages: An Economic Analysis*, 111 Harv. L. Rev. 869, 874 (1998). Under this theory, a certain
7 class of violations may be optimally deterred without necessarily eliminating all future violations.
8 Such is apparently the case here.

9 **IV. CONCLUSION**

10 For the foregoing reasons, the Court **DENIES** the plaintiff's motion to alter or amend
11 judgment.

12 This Order terminates Docket Number 28.

13 **IT IS SO ORDERED.**

14 Dated: June 14, 2015

15 
16 YVONNE GONZALEZ ROGERS
17 UNITED STATES DISTRICT COURT JUDGE